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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,988	04/08/2004	Francisco Faoro	52354/TJD/M881	9041
23363	7590	03/07/2006	EXAMINER	
CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			AMARELD JR, ROBERT W	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 03/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/820,988	Applicant(s) FAORO, FRANCISCO	
	Examiner Robert W. Amareld, Jr.	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) 15-19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

Claims 15-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-10 & 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Burkinshaw (US Pat# 6013081). Burkinshaw discloses an apparatus with a cutting jig (15, 18) defining slots with two cutting planes, where the two cutting slots are adjustable relative to each other (All of column 6) and the base plate (12), and are perpendicular, where an adjustable probe device (22) can take knee anatomy into account and is coupled to the slots (16, 18), where a plurality of cuts to accommodate a variety of implant sizes can be made by adjustment, where the cutting jig (16) may be moved parallel to the cutting plane of part 18 along the side groove of piece 12. The slot guides (16, 18) may also be used simultaneously for cutting and an additional abutment,

also the edges of each slot form abutment elements for the cutting tool to restrict the cut, alternatively the holes of the apparatus (Figure 11) may form guides for abutment instruments (being pins) which intersect all planes of cutting where all abutments are coupled to the slot element or are the slot element themselves. The cutting jig, further encompasses a clamping device (20) with an actuating member (121) by which the clamping element (134) is fixed to the base element (12) and simultaneously, the orientation of a cutting plane can be fixed relative to another cutting plane.

Claims 1, 3, 4-8, 12-14 rejected under 35 U.S.C. 102(b) as being anticipated by Duffner (US Pat# 6796986). Duffner discloses an apparatus with a cutting jig (200) defining slots (270) with two cutting planes, where the two cutting slots are adjustable relative to each other via the radially moving arms (140, 120) and relative to the base (110, 130) via sliding along the arms, where the cutting jig (20) may be moved parallel to the cutting plane by sliding along the arms (140,120). The slot guides (16, 18) may also be used simultaneously for cutting and an additional abutment, also the edges of each slot form abutment elements for the cutting tool to restrict the cut, alternatively the holes of the apparatus (Figure 11) may form guides for abutment instruments (being pins) or the arms (120,140) may be guides for an abutment instrument, where and abutment instrument using at least one of these guides is fully capable of intersecting all planes of cutting where all abutments are coupled to the slot element or are the slot element themselves. The cutting jig, further encompasses a clamping device (170, 175) with an actuating member (130) by which the clamping element (170, 175) is fixed to the base element (110, 130) and simultaneously, the orientation of a cutting plane can

be fixed relative to another cutting plane. The knob (170) is a turntable arrangement that is rotatably supported on the cutting jig (110), where the axis of the knob is perpendicular to the cutting planes and the cutting guides (200) are rotatably connected to the turntable and are capable of forming a guide for an abutment.

Claims 1, 4, 5 & 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Gustilo (US Pat# 5925049). Gustilo discloses a cutting jig (300) with portions 302 and 350 and base portion 320 (Figure 24) where the cutting planes are slots and are adjustable relative to each other and the base element via the holes (306, 304) where the jig is guided by the grooves of the base element at each corner (Figure 24). Any of the slots and holes of the device are fully capable of use as a guide for an abutment. Furthermore, the components may be spaced apart, as shown in the embodiment of figure 36, where the upper side of the base element will form an intermediate space forming a slot and is fully capable of being a cutting plane.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Duvillier, US Pat# 5749876- resection apparatus; Coon, US Pub# 20050273115 -knee arthroplasty instrument; Samuelson, US Pat# 5611802- resecting bone; Waddel, US Pat# 6174314- resection guide.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone number is 571-272-6170. The examiner can normally be reached on M-F 9am -5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RWA

Robert W Amareld, Jr.
Examiner
Art Unit 3738



CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700